

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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In the Matter of)
)
Amendment of the Commission's Rules)
to Establish Rules and Policies)
Pertaining to a Mobile Satellite)
Service in the 1610-1626.5/)
2483.5-2500 MHz Frequency Bands)

CC Docket No. 92-1066
FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

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CONSOLIDATED COMMENTS AND OPPOSITION

AMSC Subsidiary Corporation ("AMSC") hereby responds to the petitions for reconsideration of the Report and Order in the above-referenced docket^{1/} filed by: Constellation Communications, Inc. ("CCI"); Loral/Qualcomm Partnership, L.P. ("LQP"); Motorola Satellite Communications, Inc. ("MSCI"); and TRW, Inc. ("TRW").^{2/} AMSC strongly opposes proposals by CCI, MSCI and TRW that the Commission disqualify AMSC as a Big LEO applicant. Now that the Commission has established rules for systems to operate in the bands, fairness and due process require the Commission to maintain its policy of giving all applicants that submitted timely applications three years ago an opportunity to amend to comply with those new rules. The public interest also benefits from providing AMSC with an opportunity to go forward as a Big LEO licensee, since AMSC is well-positioned to expand from a domestic service to one that is global. AMSC also comments on several other proposals to modify or clarify the Commission's new rules.

^{1/} FCC 94-261 (October 14, 1994). 59 Fed. Reg. 53294 (October 21, 1994).

^{2/} All but CCI characterize their petitions as requesting both partial reconsideration and clarification.

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Background

AMSC is licensed by the Commission to construct and operate the U.S. MSS system in the 1544-1559/1645.5-1660.5 MHz bands.^{3/} Development of the \$650 million GSO system is well underway, with launch of the first satellite (AMSC-1) scheduled for March 1995, and the system should be fully operational by this summer. Investment in AMSC's system has been largely in the form of equity from the principal shareholders, subsidiaries of GM Hughes Electronics Corp., AT&T Corp., Singapore Telecommunications, Ltd., and Mobile Telecommunications Technologies Corp., and an Initial Public Offering completed in 1993 which raised \$178 in public investment. With the launch of its first satellite, AMSC will be fulfilling its promise and the promise of a spectrum allocation proceeding begun by the Commission in 1982, to provide for the first time truly nationwide two-way mobile communications service to even the most rural and remote parts of the United States.

AMSC initially applied to use these bands with geostationary satellites. Application of AMSC, FCC File Nos. 15/16-DSS-MP-91 (June 3, 1991). Pursuant to the procedures set forth in the Report and Order, however, on November 16, 1994 AMSC filed an amendment to its initial application to bring AMSC's proposed use of this spectrum into conformity with the Commission's rules and policies regarding the non-GSO use of the band, thus showing AMSC's interest in remaining in the current processing group for the frequency bands at issue here. At the same time, AMSC noted its continued interest in trying to convince the

^{3/} See Memorandum Opinion, Order and Authorization, 4 FCC Rcd 6041 (1989); Final Decision on Remand, 7 FCC Rcd 266 (1992), aff'd sub nom. Aeronautical Radio, Inc. v. FCC, 983 F.2d 275 (1993); Memorandum Opinion and Order, 8 FCC Rcd 4040 (1993).

Commission to permit AMSC to access at least a portion of the bands as part of its domestic geostationary system.

In its own Petition for Reconsideration of the Report and Order, AMSC urged the Commission to reconsider its decision to exclude geostationary satellite systems from these bands. AMSC also urged the Commission to reverse its decision that there is adequate capacity for five of the proposed systems to share the band, but inadequate capacity for all six system applicants, and to clarify the rights of those applicants for the bands that demonstrate their financial qualifications after November 16, 1994 but before January 31, 1996.

Four of the five other competing applicants also filed Petitions for Reconsideration.^{4/} Of greatest importance to AMSC, the petitions of CCI, MSCI and TRW urge the Commission to disqualify AMSC as an applicant for the bands. Other proposals which AMSC comments on below include one by MSCI and TRW urging the Commission to change its position permitting system operators to have agreements for exclusive access to a foreign market; a request by TRW to permit waivers of the PFD limit in the 2.4 GHz band; and a request by Loral to clarify the application of Section 25.136(b).^{5/}

^{4/} The only applicant not to submit a petition is Mobile Communications Holdings, Inc. ("MCHI").

^{5/} MSCI also advocates either the Commission's adoption of emission masks or a statement of principles to guide the applicants in the development of such emission limits. MSCI Petition, pp. 15-16. AMSC believes that at this time there is insufficient information about MSCI's system to determine whether it will cause harmful interference to AMSC's system or to any other system in adjacent bands.

Discussion

I. AMSC Should Remain Qualified To Be A Non-GSO Applicant

As mentioned above, three of the competing applicants that submitted petitions urge the Commission to disqualify AMSC as an applicant for a non-geostationary system. We will respond to each of the parties in turn.

CCI contends that AMSC has adequate spectrum already. As AMSC has demonstrated previously, however, its access to mobile-link spectrum elsewhere in the L-band is substantially constrained by the international frequency coordination process. See e.g. Consolidated Opposition and Reply of AMSC, File No. 59-DSS-MP/ML-93, at 12-18 (December 22, 1993). In those bands, the U.S. system must be coordinated with at least four other systems, all of which are either nearing completion of construction or are already launched and one of which (Inmarsat) is a large, multiple-satellite system that has been operating for years and uses massive and spectrum-inefficient global beams. Thus, the actual amount of spectrum that AMSC can access will be substantially less than the amount it has been assigned for construction. In addition, AMSC's access will be effectively limited to North America and will require AMSC to provide priority and preemptive access to certain aeronautical and maritime safety communications. Moreover, the spectrum available to AMSC for mobile links must be used for a GSO system, which effectively precludes AMSC from using the spectrum for the global non-GSO system that is the subject of its November 1994 application.

CCI also argues that AMSC's involvement in this proceeding is likely to create "difficulties and uncertainties" for those applicants that establish their financial qualifications as a result of the showings that they made on November 16, 1994. In fact, as AMSC

discussed in its Petition for Reconsideration, fairness requires that the Commission not take any action that would prejudice any qualified applicant's ability to share fully the available spectrum, particularly since the Commission's test of financial commitment appears to be so light that it does not insure that qualified applicants in fact will proceed with the construction of their proposed systems. AMSC Petition, pp. 11-14. Constellation, however, provides no support for its conclusion that the participation of AMSC or other later-qualified applicants is likely to be problematic. To the contrary, it is reasonable to expect that coordination of CDMA systems will be easier if the Commission includes from the start all potentially qualified applicants.

MSCI bases its disqualification argument on the need for the Commission to encourage competition and what MSCI characterizes as an unfair headstart that AMSC will accrue from the development of its domestic MSS system. MSCI cites as precedent the Commission's decisions: (i) to limit cellular licensee access to the new Personal Communications Service bands,^{6/} (ii) to "exclude" Omnicom from the bands at issue here because it was a mere applicant elsewhere for MSS spectrum,^{7/} and (iii) to limit the role of AT&T in the licensing of domestic fixed satellites in 1972.^{8/}

As an initial matter, it should be apparent that the Commission's decision to permit AMSC to amend its application to conform to the new rules adds to rather than detracts from competition in the market. With the experience that it has gained in the development of its domestic MSS system and the resources of its corporate shareholders, AMSC has the ability

^{6/} Second Report and Order, 8 FCC Rcd 7700 (1993).

^{7/} RDSS Order, 104 FCC 2d 650 (1986).

^{8/} Second Report and Order, 35 FCC 2d 844 (1972).

to be a significant competitor in the provision of global Mobile Satellite Services. MSCI complains that AMSC's headstart in providing domestic service will give AMSC an unfair advantage. This is an odd argument for MSCI to make, considering that MSCI has been developing its global non-GSO system for over three years now, including the authorized expenditure of over \$30 million dollars on actual construction pursuant to various Section 319(d) waivers.^{9/} Moreover, whatever advantages AMSC will accrue from operating its domestic system will merely make it a better competitor to MSCI, a result that is itself in the public interest.

The cases that MSCI cites in support of its position are similarly misplaced. The PCS licensing decision, far from standing for the necessary disqualification of AMSC, in fact demonstrates that the Commission recognizes the virtues of permitting experienced mobile services providers to gain access to additional spectrum. MSCI also mischaracterizes the decision regarding Omninet. While the Commission did reject Omninet's proposal to use the bands at issue here (at the time allocated exclusively to Radiodetermination Satellite Service) for MSS, the Commission did not disqualify Omninet; to the contrary, the Commission (as in this proceeding) permitted all applicants to amend their applications with proposals that conformed to the new rules. The citation to the Commission's Domsat licensing order is particularly odd, since it is absurd to compare AMSC, which at this point has no market

^{9/} MSCI should understand the need for and the virtue of expansion spectrum for MSS systems, since MSCI itself has been a proponent of additional spectrum allocations for MSS so that it may expand the capacity of its own system.

power, with AT&T in 1972, which at that time had tremendous market power in the domestic and international telecommunications market.^{10/}

TRW urges the disqualification of AMSC on the grounds that AMSC has radically changed its system design. As discussed above in connection with MSC's petition, the fact that AMSC is an advocate of using the 1.6/2.4 GHz bands in part for GSO systems is irrelevant to the issues of whether the public will benefit from permitting AMSC to qualify as a non-GSO licensee and whether due process requires the Commission to permit AMSC to continue to participate in the licensing process by having the opportunity to pursue a non-GSO application now that such a requirement has been established. With respect to both of those issues, it is clear that the Commission made the right decision to permit AMSC to file a conforming application. The public will benefit from the added potential for an operational system and the fairness of the process is upheld by giving all applicants an opportunity to submit conforming amendments. TRW, which modified its application substantially, should appreciate the Commission's concern for fairness.^{11/} In fact, in the same petition in which it seeks to disqualify AMSC for modifying its proposal, TRW states its interest in preserving the right to modify its system further to use feederlinks below 15 GHz if those become available.^{12/}

^{10/} See Second Report and Order, 9 FCC Rcd 1411 (1994) (forebearing from applying most Title II regulation to AMSC).

^{11/} For example, in its recent proposal TRW nearly doubled its number of beams and has proposed to more than double its use of feeder-link spectrum, to 300 MHz in each direction.

^{12/} TRW claims that permitting AMSC to use the 1.6/2.4 GHz bands as a non-GSO system operator would be inconsistent with the Commission's prior decision to exclude non-GSO systems from the bands in which AMSC's GSO system is

(continued...)

II. Other Issues

A. Different Band Sharing Plans May Be Appropriate In Different Jurisdictions

MSCI and TRW urge the Commission to reverse its decision in the Report & Order refraining from imposing the domestic band sharing plan on other countries. MSCI and TRW claim that the Commission should take such action in order to insure that systems licensed in the U.S. are not the subject of discrimination and whipsawing by foreign governments. AMSC opposes the proposal by MSCI and TRW. There are occasions when it is appropriate for a country to exercise its sovereignty on behalf of a system that is better able to serve that country's interests. For example, the Commission itself made this decision in connection with its licensing of AMSC, limiting the use of foreign systems in the U.S. in order to assure adequate capacity for a system designed specifically for the U.S. market. Moreover, as the Commission recognizes in the Report & Order, there is no evidence at this

^{12/}(...continued)

authorized. TRW Petition, p. 8. The Commission's rationale, however, for excluding non-GSO systems from those bands is the impossibility of coordinating their operations with existing GSO systems that operate using FDMA technology. Final Decision on Remand, 7 FCC Rcd 266, 273 (1992). Moreover, TRW's argument appears to address the issue of AMSC's building a GSO system in these bands, an issue that does not belong in TRW's petition since the Commission agreed with TRW's position in its Report and Order.

LQP and TRW also address the issue of secondary operations in the band, with LQP opposing any possibility of secondary operations in the band and TRW seeking clarification that secondary operations will be on a non-interfering basis. As AMSC indicated in its Petition for Reconsideration, secondary operations are extremely unattractive due to their vulnerability to preemption. Petition, p. 5, n.16. Nonetheless, the Commission has no reason to change its position that it is willing to consider secondary uses of the band. Such uses must be on a non-interfering basis, so there is no reason to prohibit their consideration. LQP of all parties should understand the potential value of secondary operations, given that one of its principals, Qualcomm, Inc., operates its Omnitrac system in a Fixed Satellite Service band pursuant to a secondary authorization.

time that the restraint being sought is necessary. Report & Order, para. 213. Until there is evidence of abuse, the Commission should not consider modifying its policy.

B. The Commission Should Consider Waivers of the PFD Threshold in the 2.4 GHz Band

TRW urges the Commission to announce that it will grant waivers of the current power flux density limits in the 2483.5-2500 MHz downlink band for domestic operation, prior to any change in the international regulations. AMSC supports this policy. There is increasing evidence that the PFD limits can be increased without causing harmful interference to other users and such an increase is critical to MSS systems obtaining sufficient capacity to justify their enormous costs.

C. The Commission Should Clarify the Application of Section 25.136(b)

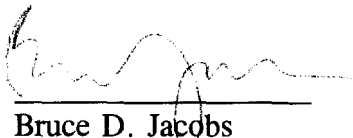
LQP urges the Commission to clarify that Section 25.136(b) would not prohibit the operation of authorized mobile terminals despite the fact that those terminals could be considered to be "transmitting" to all satellites that share the same band. AMSC agrees that such a clarification would be useful and appropriate. As long as the mobile terminals in fact are authorized to operate in the band and operate in accordance with the terms of their license, there should be no problem with the kind of unauthorized Fixed Satellite Service transmissions that Section 25.136(b) was intended to prohibit.

Conclusion

Therefore, based on the foregoing, AMSC Subsidiary Corporation respectfully requests that the Commission take action consistent with these comments.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Cynthia L. Smith, a secretary in the law firm of Fisher Wayland Cooper Leader & Zaragoza L.L.P. do hereby certify that on this 20th day of December 1994, a copy of the foregoing "Consolidated Comments and Opposition" was sent by U.S. first class mail, postage prepaid to:

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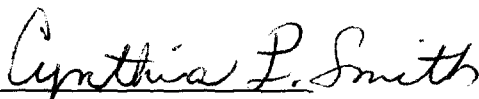
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